

January 23, 1950

Carl M. Hitt, Secretary
Tucson Police Pension Board
City Hall
Tucson, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Hitt:

We have your letter of December 17, 1949 wherein you ask our written opinion on certain questions regarding the Tucson Police Pension Board. You call our attention in particular to Section 4-503, ACA 1939, and ask:

- "1. Who should be the legal representative of the Tucson Police Pension Board?
2. Is the Tucson Police Pension Board a City board and entitled to the legal services of the City Attorney; or is it a State board entitled to the legal services of the Attorney General?
3. Does the Tucson Police Pension Board have the power to spend money from the Police Pension Fund to employ an attorney to represent it or to give the Board legal opinions?"

We shall first take up your second question. Section 4-503, supra, provides:

"Legal Advisor of departments.- The Attorney-general shall be the legal advisor of all departments of the state, and shall give such legal service as such departments may require. With the exception of the industrial commission, no official, board, commission, or other agency of the state, other than the attorney-general, shall employ any attorney or make any expenditure or incur any indebtedness for legal services. The attorney-general may, when the business of the state requires, employ assistants".

In so far as pertinent, Section 4-502, ACA 1939, reads:

"The attorney-general shall: * * *
5. Give his opinion in writing to the legislature or either house thereof, to any state officer and to any county attorney, when required, upon any question of law relating to their offices;"

Our Supreme Court held in Shute v. Frohmler, 53 Ariz. 483, 90 P. 2d 998, that the powers and duties of the Attorney General may be ascertained only by resort to the statutes. The Attorney General can by law, then, in the absence of express statutory authority, represent the Tucson Police Pension Board only if such Board is a department, board, commission or agency of the state, or if the officers thereof are state officers.

A brief resume of the Police Pension Act of 1937 (Sections 16-1801 through 16-1822 ACA 1939) will be helpful. It must be noted that the Act is found in Chapter 16 of the Code, such Chapter being entitled "Cities and Towns". The provisions of the Act are mandatory as to cities having not less than 20,000 inhabitants and optional by ordinance as to incorporated cities or towns having less than 20,000 inhabitants. The Act creates in said cities and towns police pension funds to be administered by police pension boards. Each board is composed of either the president of the city civil service commission or the head of the governing body of the city, the city clerk, the city treasurer, the chief of police and three subordinate members of the police department. Similarly constituted boards are set up for cities or towns of less than 20,000, establishing police pension funds by ordinance. Exclusive control and management of the funds rests with the police pension boards and the boards have certain expressed powers subject to the provisions of the Act. The funds consist of deductions from the pay of the members of the local police departments, equal "matching" amounts paid into the funds by the city and certain other monies. Section 16-1808 contains the provision regarding the payment of pensions from the funds. Subsequent sections deal with the financial management of the funds, payment of pensions therefrom, taxation to maintain the funds, election of the departmental members of the boards, and other such matters. Section 16-1821 provides for an annual report by the police pension boards to the governing body of the city or town, showing in detail the condition of the fund and transactions of the board. Section 16-1822 excepts from the provisions of the Act cities having at the effective

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date of the Act pension or retirement plans for their police departments. See Tucson v. Walker, 60 Ariz.232, 135 P. 2d 223. The Act was held constitutional in Luhrs v. Phoenix, 52 Ariz. 438, 83 P. 2d 238.

A careful survey of these statutory provisions discloses that the police pension boards created by the Act are in no sense state departments or agencies, and that the members of such boards are not state officers. Such boards are clearly local boards existing within (and only within) and for the benefit of the respective cities and towns affected by the Act. The fact that the particular pension boards, such as the Tucson Police Pension Board (Tucson having elected to come within the Act in 1941, see Tucson v. Walker, supra), were established under and by authority of the Police Pension Act of 1937 does not divest such boards of their purely local character and nature. This would appear self-evident.

It appears to us that the provisions of the act themselves are ample authority for the proposition that the police pension boards set up thereunder are municipal boards and must be classed as "city" or "town" boards. The conclusion necessarily follows, as we have heretofore advised you, that the Attorney General cannot, under the laws of Arizona, represent or advise the Tucson Police Pension Board. This being the case, it is neither necessary nor proper that we undertake to express an opinion as to the answers to your other questions.

We regret the delay that has been occasioned in replying to your inquiry.

Very truly yours,

FRED O. WILSON
Attorney General

RICHARD C. BRINEY
Assistant Attorney General